

SERVED: March 15, 1994

NTSB Order No. EA-4109

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of March, 1994

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12455
v.)	
)	
GREGORY G. GORAK,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge Jimmy Coffman at the conclusion of a hearing held in this case on August 3, 1992.¹ In that decision the law judge affirmed an order suspending respondent's airline transport pilot certificate for 60 days based on allegations that, as pilot-in-command of a passenger-

¹ Attached is an excerpt from the hearing transcript containing the oral initial decision.

carrying flight operated under Part 135, he took off from General Mitchell Airport, Milwaukee, Wisconsin, when the runway visual range (RVR) was less than that prescribed in the company's operations specifications, in violation of 14 C.F.R. §§ 135.5, 135.225(g), and 91.13(a).² For the reasons discussed below, we deny respondent's appeal and affirm the initial decision.

Because respondent admitted the factual allegations of the complaint, and the violations of section 135.5 and 135.225(g), only the 91.13(a) charge and the appropriateness of the 60-day suspension are at issue.

² Section 135.5 provides, in pertinent part:

§ 135.5 Certificate and operations specifications required.

No person may operate an aircraft under this part without, or in violation of, an air taxi/commercial operator (ATCO) operating certificate and appropriate operations specifications issued under this part, . . .
* * *

Section 135.225(g) provides, in pertinent part:

§ 135.225 IFR: Takeoff, approach and landing minimums.

* * *

(g) Except as provided in paragraph (h) of this section, if takeoff minimums are not prescribed in part 97 of this chapter for the takeoff airport, no pilot may take off an aircraft under IFR when the weather conditions reported by [an approved weather reporting facility] . . . are less than that prescribed in part 91 of this chapter or in the certificate holder's operations specifications.

Section 91.13(a) provides:

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

At the time of this incident, respondent was employed by Scott Aviation, Inc. According to that company's operations specifications, the takeoff visibility minimums for reciprocating aircraft, such as the Cessna 421 piloted by respondent in this incident, could be no less than Category I landing minimums, or 1800 feet RVR. It is undisputed that respondent took off when the reported RVR was 1200 feet. Despite having successfully undergone frequent company testing and training regarding the company's RVR departure standards, respondent maintains that he simply did not know, or forgot, that the applicable RVR was 1800 feet. It was the opinion of both Scott Aviation's Director of Operations, and the FAA investigating inspector in this case, that -- considering the poor performance capability of this aircraft,³ and the lack of safeguards necessary for a low-visibility landing⁴ -- if respondent had experienced engine trouble at or directly after his takeoff, he could not have landed safely at that airport or continued safely to another airport on a single engine. (Tr. 22-3, 36, 35, 51, 63-4.)

The law judge concluded that respondent's operation was careless:

[T]he rules are there for a very specific reason. . . . if

³ The aircraft's performance capability was further degraded by the humid weather conditions, and the near-maximum gross weight of the aircraft at takeoff.

⁴ Inspector Krueger indicated that a low-visibility takeoff or landing would not be safe without safeguards such as appropriate low-visibility training, a two-pilot crew, and established procedures for such a takeoff. (Tr. 63-4.)

you have an RVR that's less than your landing RVR, . . . any pilot places himself in a very precarious situation, because . . . if you . . . rotate and take-off, and you have less than landing minimums, you've got a real situation if you lose and [sic] engine. You're instantly in the clouds, and you have no place to go. You've either got to declare an emergency, and try to seek an alternate, or you're really in a quandary . . . [e]specially in an aircraft, and I don't want to be too unkind to a [Cessna] 421, but it has less than desirable single engine capabilities.

(Tr. 127.)

We agree that the record in this case supports a finding of at least a residual violation of section 91.13(a).⁵ We held as much in Administrator v. Erickson and Nehez, NTSB Order No. EA-3869 (1993), a case involving substantially similar facts. In that case we found that "[r]espondents' operation of a passenger-carrying aircraft, on takeoff, from a runway where visibility was below RVR minimums, and while other aircraft were operating in the airport area . . . amply supports a residual finding of a violation of FAR section 91.9 [the predecessor to section 91.13(a)] here. The potential for endangerment was not 'hypothetical' . . . and the fortuitous circumstance that no one was actually harmed by [respondents'] carelessness does not mean that they had not jeopardized their passengers' safety within the meaning of the regulation." Id. at 5.

⁵ A residual violation is one which flows solely from a respondent's violation of another, independent, regulation. We have held that the finding of a violation of an operational provision of the Federal Aviation Regulations, without more, is sufficient to support a finding of a "residual" or "derivative" § 91.9 [now § 91.13(a)] violation. Administrator v. Pritchett, NTSB Order No. EA-3271 at 8 (1991); Administrator v. Thompson, NTSB Order No. EA-3247 at 5, n. 7 (1991).

We also concur with the law judge's conclusion that a 60-day suspension is an appropriate sanction for the violations in this case. Respondent has cited no contrary precedent, and no mitigating factors. We note also that respondent's enforcement history contains a prior violation of section 91.9, as a result of his having left an aircraft unattended with its engine running. (Tr. 65, 98-9.)

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed in its entirety; and
3. The 60-day suspension of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.⁶

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

⁶ For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).